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Internal Revenue Manual 9.1.3.3.2.2.2 (01-30-2023)

26 USC 7201 – Attempt to Evade or Defeat Any Tax or Payment Thereof

1. The substance of the offense under 26 USC 7201 is the term "attempt in any manner". The statute does not define attempt, nor does it limit or define the means or methods by which the attempt to evade or defeat any tax may be accomplished.
2. Courts have held, however, that the term "attempt" implies some affirmative act or the commission of some overt act. This affirmative act need not be the filing of a false or fraudulent return, although most cases in this area do involve the filing of such a return. Courts have also held that a false statement made to Treasury agents for the purpose of concealing unreported income is an attempt to evade or defeat a tax.
3. The willful omission of a duty or the willful failure to perform a duty imposed by statute does not per se constitute an attempt to evade or defeat a tax. However, a willful omission or failure (such as a willful failure to make and file a return) when coupled with affirmative acts or conduct from which an attempt may be inferred would constitute an attempt. The Supreme Court in *Spies v. United States* provided examples of conduct that may imply "the attempt to evade or defeat any tax", such as:
 - a. Keeping a double set of books
 - b. Making false entries, alterations, invoices, or documents
 - c. Destroying books or records
 - d. Concealing assets or covering up sources of income
 - e. Handling one's affairs to avoid making records usual in transactions of the kind
 - f. Any conduct, the likely effect of which would be to mislead or to conceal
4. The term "attempt" does not mean that one whose efforts are unsuccessful cannot be convicted under 26 USC 7201. The crime is complete when the attempt is made and nothing is added to its criminality by success or consummation, as would be the case with respect to attempted murder. It has been held that attempts cover both successful and unsuccessful endeavors or efforts. As the courts have stated, the real character of the offense lies, not in the failure to file a return or in the filing of a false return, but rather in the attempt to evade any tax.
5. It is well settled that a separate offense may be committed with respect to each year. Therefore, an attempt for one year is a separate offense from an attempt for a different year.

6. There may also be more than one violation in one year resulting from the same acts, such as the willful attempt to evade the payment of tax and the willful attempt to evade tax. Likewise, there may be a willful attempt to evade tax and a willful failure to file a return for the same year.

7. The mere failure or willful failure to pay a tax does not constitute an attempt to evade or defeat the payment of that tax. The above discussion of the need for an affirmative action or the commission of some overt act applies equally to this offense. Examples of actions that might constitute the attempted evasion of the payment of tax include:

- a. Concealing assets
- b. Reporting income through others
- c. Misappropriating, converting, and diverting corporate assets
- d. Filing late returns
- e. Failing to withhold taxes as required by law
- f. Filing false declarations of estimated taxes
- g. Filing false tentative corporate returns

8. Courts have held that disbursement of available funds to creditors other than the government, or to corporate stockholders is not in itself an attempt to evade or defeat the payment of taxes.